

NOT FOR PUBLICATION

CONCURRING OPINION BY FOLEY, J.

The Family Court of the Second Circuit (family court) did not err in holding that Defendant-Appellant Blue Liles (Liles) violated the temporary restraining order by contacting Penny Greenawalt (Greenawalt).

The Merriam-Webster's Collegiate Dictionary (10th ed. 2000) defines "contact" as "an establishing of communication with someone or an observing [or] receiving of a significant signal from a person or object." *Id.* at 248. It defines "communication" as "a process by which information is exchanged between individuals through a common system of symbols, signs, or behavior." *Id.* at 232.

State v. Stanley, 110 Hawai'i 116, 124, 129 P.3d 1144, 1152 (App. 2005).

The evidence adduced in the family court

must be considered in the strongest light for the prosecution when the appellate court passes on the legal sufficiency of such evidence to support a conviction[.]

. . . [A]s trier of fact, the trial judge is free to make all reasonable and rational inferences under the facts in evidence, including circumstantial evidence.

State v. Pone, 78 Hawai'i 262, 265, 892 P.2d 455, 458 (1995)

(quoting State v. Batson, 73 Haw. 236, 248-49, 831 P.2d 924, 931 (1992)).

When Liles "turned to look over his shoulder right at Greenawalt and with large eyes kind of winked and smirked at her with kind of like a ha, ha, ha, I-got-you look, and just waved," Liles was establishing communication with Greenawalt and thus contacting Greenawalt.

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Despite this contact in violation of the temporary restraining order, the family court abused its discretion in not dismissing the charge against Liles pursuant to Hawaii Revised Statutes § 702-236(1)(b) (1993):

§702-236 De minimis infractions. (1) The court may dismiss a prosecution if, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds that the defendant's conduct:

- (b) Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction[.]

The "harm or evil sought to be prevented by" HRS § 586-4 is "domestic abuse." State v. Wise, 107 Hawai'i 67, 71, 109 P.3d 708, 712 (App. 2005). Hawaii Revised Statutes § 586-1 (1993) defines "domestic abuse" as "[p]hysical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault, extreme psychological abuse or malicious property damage between family or household members[.]"

Given the nature of Liles's conduct and the nature of the attendant circumstances, the family court "abused its discretion by failing to dismiss [this] case under the § 702-236(1)(b) exception for conduct causing harm 'too trivial to warrant the condemnation of conviction.'" State v. Akina, 73 Haw. 75, 77, 828 P.2d 269, 271 (1992).

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